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COLORADO GENERAL ASSEMBLY

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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Megan Waples, Office of Legislative Legal Services

DATE: March 4, 2022

SUBJECT: Repeal of statutes rendered unconstitutional by the passage of Amendment 76 at the 2020 general election.

Summary

In 2019, the General Assembly enacted statutes authorizing a person who is preregistered to vote, is seventeen years old on the date of a primary election, and will be eighteen years old on the date of the next general election to vote in the primary election as part of H.B. 19-1278. At the 2020 general election, the voters of the state adopted Amendment 76, which amended the provisions in the Colorado constitution concerning the qualifications of an elector. Under Amendment 76, only a citizen of the United States who is at least eighteen years old is eligible to vote in any election. Under the amended constitutional language, the provisions of H.B. 19-1278 allowing certain seventeen-year-old individuals to vote in a primary election are unconstitutional. The Office of Legislative Legal Services initially identified the conflict and was asked by the Chair to bring the matter before the Statutory Revision Committee at its March 11, 2022, meeting.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC or the members of the General Assembly. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

1. Background.

In H.B. 19-1278, the General Assembly enacted section 1-2-101 (2)(c), C.R.S, authorizing an individual who is preregistered in accordance with the "Uniform Election Code of 1992" (code), is seventeen years of age on the date of a primary election, and will be eighteen years of age on the date of the next general election to vote in the primary election:

1-2-101. Qualifications for registration – preregistration. (2)(c) A person preregistered under this subsection (2) who is seventeen years of age on the date of a primary election or presidential primary election and who will be eighteen years of age on the date of the next general election is entitled to vote in the primary election or presidential primary election.

H.B. 19-1278 made additional conforming amendments throughout the code implementing this provision, including provisions requiring county clerk and recorders to send mail ballots to eligible preregistrants in a primary election and allowing an eligible preregistrant to vote in person at a primary election.²

At the time H.B. 19-1278 was enacted, article VII, section 1 of the Colorado Constitution provided:

Section 1. Qualifications of Elector. Every citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections.

At the November 2020 general election, Colorado voters approved Amendment 76, which amended this constitutional provision. Amendment 76 was a citizen-initiated amendment that changed the language of section 1 to read:

Only a citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections. (**Emphasis added.**)

² See §§ 1-7-201 (1) and (2.3) and 1-7.5-107 (3)(a)(I), C.R.S. See also, §§ 1-2-205 (2), 1-2-202.5 (3)(a)(I), 1-2-227 (2), 1-3-101 (1)(a), 1-4-806, 1-9-203 (4), and 1-9-204 (1), C.R.S.

According to the 2020 Ballot Information Booklet, commonly called the Blue Book, the amendment was intended to preclude the state from pursuing policies that would allow noncitizens to vote by specifying in the constitution that **only** a citizen of the United States who met the other qualifications of the section could vote.³ The amendment passed with 62.9% of the vote.

2. The passage of Amendment 76 makes the statutes allowing certain seventeen-year-old individuals to vote in primary elections unconstitutional.

The statutes allowing a preregistered individual who is seventeen years old on the date of a primary election and who will be eighteen on the date of the general election to vote in the primary election are in conflict with the amended language of article VII, section 1 of the Colorado Constitution, rendering them unconstitutional. When construing a constitutional amendment, the duty of a reviewing court is to "give effect to the electorate's intent in enacting the amendment."⁴ The words of the amendment are given their ordinary and popular meaning, and if the words are unambiguous, they are applied as written.⁵ "If the intent of the electorate is not clear from the language of an amendment, courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment."⁶

As amended, article VII, section 1 of the Colorado Constitution unambiguously states that only a citizen of the United States who is at least eighteen years old is qualified to vote in an election. Unlike the previous language of "every citizen," the phrase "only a citizen" unequivocally limits the right to vote to those who meet the criteria specified in article VII, section 1 of the Colorado Constitution, including that the individual be at least eighteen years old. Colorado courts have repeatedly found that the use of the word "only" is exclusionary. For example, in considering a statute concerning the circumstances in which a court can disqualify a district attorney, the Colorado Supreme Court held, "in using the word 'only' and defining with specificity the circumstances under which disqualification is proper, the [statute] eliminates" other

³ 2020 State Ballot Information Booklet, Legislative Council of the Colorado General Assembly, Research Publication No 748-1,18.

⁴ *Lobato v. People*, 218 P.3d 358, 375 (Colo. 2009).

⁵ *Ritchie v. Polis*, 2020 CO 69, ¶ 7; *Lobato*, 218 P.3d at 375.

⁶ *Lobato*, 218 P.3d at 375. (Internal quotation marks and citation omitted).

bases which are not specifically listed as grounds for disqualification.⁷ Similarly, in applying a statute governing when a child may be available for adoption, the Colorado Court of Appeals looked to the dictionary definition of "only" and held that it was "synonymous with 'exclusively' or 'solely'...and its use serves to delimit" the situations in which a child could be available for adoption.⁸ Following the adoption of Amendment 76, article VII, section 1 of the Colorado Constitution establishes with specificity the qualifications of electors. The use of the word "only" necessarily excludes those who do not meet those criteria from being qualified electors.

To the extent the language of the amendment itself is not clear, a reviewing court may look to other contemporaneous indicators of the intent of the electorate, including the Blue Book's explanation of the impact of the initiative.⁹ In this case, the Blue Book noted that the purpose of Amendment 76 was to prevent the state from expanding the right to vote beyond the qualifications set forth in the constitution. While the objective of the amendment was to ensure the enforcement of the requirement for citizenship, the Blue Book informed voters that the amendment would also prevent "the state from extending voter eligibility to...those under the age of 18."¹⁰ It also specifically noted that "under Amendment 76, 17-year-olds who are currently able to vote in primary elections will no longer be eligible to do so."¹¹ Thus voters were informed and understood that passage of the measure would render section 1-2-101 (2)(c), C.R.S., and the associated statutes implementing its provisions unconstitutional.

⁷ *People ex rel. N.R.*, 139 P.3d 671, 676 (Colo. 2006).

⁸ *In re Adoption of T.K.J.*, 931 P.2d 488, 492 (Colo. Ct. App. 1996).

⁹ *See, e.g., Lobato*, 218 P.3d at 375.

¹⁰ *2020 State Ballot Information Booklet*, 18.

¹¹ *Id.*

Statutory Charge¹²

The Statutory Revision Committee is charged with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The sections of the code authorizing certain seventeen-year-old individuals to vote in primary elections and requiring county clerk and recorders to send those individuals mail ballots in primary elections, along with other implementing requirements, contradict the amended language of article VII, section 1 of the Colorado Constitution. Repealing these provisions comports with the Committee's charge to eliminate contradictory rules of law and to harmonize the laws of the state; however, a Colorado court has not yet considered or issued an opinion on the question of whether Amendment 76 renders these statutes unconstitutional.

Proposed Bill

The attached bill draft repeals the statutory provisions enacted in H.B. 19-1278 authorizing an individual who is preregistered, is seventeen years old on the date of a primary election, and who will be eighteen years old on the date of a general election to vote in the primary election, including the conforming amendments to implement that requirement.

¹² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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2.24.22

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LLS NO. 22-0889.01 Megan Waples x4348

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Repeal 17 Year Olds Voting Primary Elections"

A BILL FOR AN ACT

101 **CONCERNING THE REPEAL OF STATUTES RENDERED**
102 **UNCONSTITUTIONAL BY THE PASSAGE OF AMENDMENT 76 AT**
103 **THE 2020 GENERAL ELECTION THAT ALLOWED A PERSON WHO**
104 **IS SEVENTEEN YEARS OF AGE ON THE DATE OF A PRIMARY AND**
105 **WILL BE EIGHTEEN YEARS OF AGE ON THE DATE OF THE NEXT**
106 **GENERAL ELECTION TO PARTICIPATE IN THE PRIMARY**
107 **ELECTION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Statutory Revision Committee. As part of House Bill 19-1278, the general assembly authorized a person who is preregistered under the "Uniform Election Code of 1992" (code), is 17 years of age on the date of a primary election, and will be 18 years of age on the date of the next general election to vote in the primary election. House Bill 19-1278 made conforming amendments throughout the code to implement this change. These statutory provisions were rendered unconstitutional when, at the 2020 general election, the voters of the state adopted Amendment 76, amending the state constitution to specify that "[o]nly a citizen of the United States who has attained the age of eighteen years...shall be qualified to vote at all elections".

The bill repeals the unconstitutional statutory provisions authorizing certain persons who are 17 years of age to vote and participate in primary elections.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 1-2-101, **repeal** (2)(c) as follows:

1-2-101. Qualifications for registration - preregistration.
(2) (c) ~~A person preregistered under this subsection (2) who is seventeen years of age on the date of a primary election or presidential primary election and who will be eighteen years of age on the date of the next general election is entitled to vote in the primary election or presidential primary election.~~

SECTION 2. In Colorado Revised Statutes, 1-2-202.5, **amend** (3)(a)(I) as follows:

1-2-202.5. Online voter registration - online changes in elector information. (3) The electronic voter registration form must include:
(a) (I) The questions "Are you a citizen of the United States of America?", "Are you at least sixteen years of age?", "Do you understand that you must be at least ~~seventeen years old and turning eighteen years old on or before the date of the next general election to be eligible to vote~~

1 ~~in a primary election, and at least~~ eighteen years old to be eligible to
2 vote?", ~~in any other election?",~~ "Have you resided in Colorado for at least
3 twenty-two days immediately prior to the election?", "Do you reside in the
4 precinct in which you intend to register?", "Is the address you have listed
5 your sole legal place of residence for purposes of voting?", and "Do you
6 affirm that you will not cast more than one ballot in any election?" and
7 places for the elector to input answers to the questions.

8 **SECTION 3.** In Colorado Revised Statutes, 1-2-205, **amend** (2)
9 as follows:

10 **1-2-205. Self-affirmation made by elector.** (2) Each elector
11 making application for registration or preregistration shall make the
12 following self-affirmation: "I, ..., affirm that I am a citizen of the United
13 States; I have been a resident of Colorado for at least twenty-two days
14 immediately before an election I intend to vote in; I am at least sixteen
15 years old; and I understand that I must be at least ~~seventeen and turning~~
16 ~~eighteen on or before the date of the next general election to be eligible~~
17 ~~to vote in a primary election, and at least~~ eighteen to be eligible to vote.
18 ~~in any other election.~~ I further affirm that the residence address I provided
19 is my sole legal place of residence. I certify under penalty of perjury that
20 the information I have provided on this application is true to the best of
21 my knowledge and belief; and that I have not, nor will I, cast more than
22 one ballot in any election."

23 **SECTION 4.** In Colorado Revised Statutes, 1-2-227, **amend** (2)
24 as follows:

25 **1-2-227. Custody and preservation of records.** (2) The voter
26 information provided by a preregistrant who will not turn eighteen years
27 of age by the date of the next election shall be kept confidential in the

1 same manner as, and using the programs developed for, information that
2 is kept confidential pursuant to section 24-72-204 (3.5). Nothing in this
3 subsection (2) shall be construed to require any request, application, or
4 fee for such confidentiality. When the preregistrant will be eighteen years
5 of age on the date of the next election, ~~or on January 1 of the year in~~
6 ~~which the preregistrant will be eligible to vote in any primary election~~
7 ~~under section 1-2-101 (2)(c)~~, such information is no longer confidential
8 under this subsection (2).

9 **SECTION 5.** In Colorado Revised Statutes, **repeal** 1-4-806 as
10 follows:

11 **1-4-806. Preregistrants eligible to sign petitions.** ~~A preregistrant~~
12 ~~who is eligible to vote in a primary election under section 1-2-101 (2)(c)~~
13 ~~is eligible to sign a petition under this part 8 to nominate a candidate for~~
14 ~~the primary election or for the next general election.~~

15 **SECTION 6.** In Colorado Revised Statutes, 1-7-201, **amend** (1)
16 and (2.3) as follows:

17 **1-7-201. Voting at primary election.** (1) Any registered elector
18 ~~including a preregistrant who is eligible under section 1-2-101 (2)(c)~~, who
19 has declared an affiliation with a political party that is participating in a
20 primary election and who desires to vote for candidates of that party at a
21 primary election shall show identification, as defined in section 1-1-104
22 (19.5), write his or her name and address on a form available at the voter
23 service and polling center, and give the form to one of the election judges.

24 (2.3) An eligible unaffiliated elector ~~including a preregistrant who~~
25 ~~is eligible under section 1-2-101 (2)(c)~~, is entitled to vote in the primary
26 election of a major political party without affiliating with that political
27 party. To vote in a political party's primary election without declaring an

1 affiliation with the political party, any eligible unaffiliated elector shall
2 declare to the election judges the name of the political party in whose
3 primary election the elector wishes to vote. Thereupon, the election
4 judges shall deliver the appropriate party ballot to the elector. In addition,
5 any eligible unaffiliated elector may openly declare to the election judges
6 the name of the political party with which the elector wishes to affiliate
7 and complete the necessary forms. An eligible elector must separately
8 date and sign or date and initial a declaration of affiliation with a political
9 party form in such manner that the elector clearly acknowledges that the
10 affiliation has been properly recorded. Thereupon, the election judges
11 shall deliver the appropriate party ballot to the eligible elector.

12 **SECTION 7.** In Colorado Revised Statutes, 1-7.5-107, **amend**
13 (3)(a)(I) as follows:

14 **1-7.5-107. Procedures for conducting mail ballot election -**
15 **primary elections - first-time voters casting a mail ballot after having**
16 **registered by mail to vote - in-person request for ballot - repeal.**

17 (3) (a) (I) Not sooner than twenty-two days before a general, primary, or
18 other mail ballot election, and no later than eighteen days before the
19 election, the county clerk and recorder or designated election official shall
20 mail to each active registered elector, at the last mailing address
21 appearing in the registration records and in accordance with United States
22 postal service regulations, a mail ballot packet, which must be marked
23 "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED.", or
24 any other similar statement that is in accordance with United States postal
25 service regulations. ~~For a primary mail ballot election, active registered~~
26 ~~electors includes preregistrants eligible to vote in that primary under~~
27 ~~section 1-2-101 (2)(c).~~ Nothing in this subsection (3) affects any

1 provision of this code governing the delivery of mail ballots to an absent
2 uniformed services elector, nonresident overseas elector, or resident
3 overseas elector covered by the federal "Uniformed and Overseas
4 Citizens Absentee Voting Act", 52 U.S.C. sec. 20301 et seq.

5 **SECTION 8.** In Colorado Revised Statutes, 1-9-203, **amend** (4)
6 as follows:

7 **1-9-203. Challenge questions asked person intending to vote.**

8 (4) (a) If the person is challenged as not eligible to vote in an election
9 ~~other than a primary election~~ because the person will not be eighteen
10 years of age or older on or before election day, an election judge shall ask
11 the following question: To the best of your knowledge and belief, will
12 you be eighteen years of age or older on election day?

13 ~~(b) If the person is challenged as not eligible to vote in a primary~~
14 ~~election because the person will not be eighteen years of age on or before~~
15 ~~the date of the next general election, an election judge shall ask the~~
16 ~~following question: To the best of your knowledge and belief, are you at~~
17 ~~least seventeen years of age and will you be at least eighteen years of age~~
18 ~~on or before the date of the next general election?~~

19 **SECTION 9. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, or safety.